Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

THE LIBERTARIAN PARTY OF FLORIDA, THE LIBERTARIAN PARTY OF FLORIDA EXECUTIVE COMMITTEE, and ROBERT WILSON,

Petitioners,

v.

JIM SMITH, in his official capacity as Secretary of State, and DOROTHY JOYCE, in her official capacity as Director of the Division of Elections,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Is an election law unrelated to ballot-access constitutionally legitimate if the law provides for different distribution and use of candidate filing fees, based upon the major or minor party status of similarly-situated ballot-qualified candidates, to remit portions of said respective candidates' filing fees only to the executive committees of major parties but not to minor party executive committees?

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PETITION FOR WRIT OF CERTIORARI

The Libertarian Party of Florida, the Libertarian Party of Florida Executive Committee, and Robert Wilson respectfully pray that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of Florida entered in this proceeding on December 5, 1996, petitioners' motion for rehearing having been denied on February 17, 1997.

OPINIONS BELOW

The Circuit Court of Leon County rendered an order of final judgment on January 11, 1995, denying Petitioners' Motion for Judgment on the Merits and granting the Respondents' Motion for Judgment on the Merits.

The First District Court of Appeals rendered a decision and opinion on January 4, 1996, reported at 665 So.2d 1119, affirming the decision of the Circuit Court of Leon County below.

The Supreme Court of Florida rendered a decision and opinion on December 5, 1996, reported at 687 So.2d 1292, approving the decision of the First District Court of Appeals. On February 17, 1997, the Supreme Court of Florida denied Petitioners' petition for rehearing.

JURISDICTION

The judgment sought to be reviewed is the order of the Supreme Court of Florida rendered and dated December 5, 1996.

A motion for rehearing was denied by the Supreme Court of Florida on February 17, 1997.

This Court has jurisdiction to review the order of the Supreme Court of Florida by virtue of 28 U.S.C. sec. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

U.S. Constitution, amend. XIV, sec. 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Florida Statute 99.103 (1993)

Department of State to remit part of filing fees and party assessments of candidates to state executive committee. –

(1) If more than three-fourths of the full authorized membership of the state executive

committee of any party was elected at the last previous election for such members and if such party is declared by the Department of State to have recorded on the registration books of the counties, as of the first Tuesday after the first Monday in January prior to the first primary in general election years, 5 percent of the total registration of such counties when added together, such committee shall receive, for the purpose of meeting its expenses, all filing fees collected by the Department of State from its candidates less the amount transferred to the Election Campaign Financing Trust Fund pursuant to s. 99.092 and an amount equal to 15 percent of the filing fees after such transfer, which amount the Department of State shall deposit in the General Revenue Fund of the state.

(2) Not later than 20 days after the close of qualifying in even-numbered years, the Department of State shall remit 95 percent of all filing fees, less the amount transferred to the Election Campaign Financing Trust Fund pursuant to s. 99.092 and the amount deposited in general revenue pursuant to subsection (1), or party assessments that may have been collected by the department to the respective state executive committees of the parties complying with subsection (1). Party assessments collected by the Department of State shall be remitted to the appropriate state executive committee, irrespective of other requirements of this section, provided such committee is duly organized under the provisions of chapter 103. The remainder of filing fees or party assessments collected by the Department of State shall be remitted to the

appropriate state executive committees not later than the date of the first primary.

NOTE: The Florida Legislature, at the recently concluded 1997 legislative session, enacted an omnibus election reform bill which amended Florida Statute 99.103 by deleting reference and payments to the Election Campaign Financing Trust Fund. This amendment left unchanged that which is challenged in this case: Major parties are eligible for a share of the filing fees paid by their ballot-qualified candidates for state and federal office; minor parties are ineligible for a share of the filing fees paid by their ballot-qualified candidates for state and federal office.

STATEMENT OF THE CASE

The Libertarian Party of Florida, the Libertarian Party of Florida Executive Committee, and Richard Vajs filed a complaint in the Circuit Court of Leon County in 1993, challenging the Federal and state constitutionality of the fee-distribution features of s. 99.103, Fla. Stat. (1993), insofar as the state executive committees of minor parties (as defined under Florida law) receive no percentage of the filing fees paid by their respective candidates for state and federal office, while state executive committees of "major" parties are statutorily entitled to a percentage of the filing fees paid by their respective candidates for state and federal office. The petitioners sought declaratory and injunctive relief.

When the Libertarian Party of Florida did not obtain sufficient valid petition signatures to place Vajs on the

ballot, a second amended complaint was filed to substitute for Vajs as plaintiff Robert Wilson, a Libertarian candidate for District 4 in the State House of Representatives and for whom sufficient petition signatures were obtained for placement on the general election ballot.

The petitioners and respondents stipulated to the following facts: (1) The Libertarian Party of Florida is a minor party under s. 99.021(15), Fla. Stat. (1995). (2) Robert Wilson was the Libertarian Party nominee in 1994 for the District 4 seat in the Florida House of Representatives, and that Wilson paid a qualifying fee of $1,278.42 to the Department of State and appeared on the 1994 general election ballot. (3) For the period ending July 29, 1994, Wilson's campaign account had $1,550 in contributions and $1,278.42 in expenditures, that amount being Wilson's qualifying fee.

The Circuit Court of Leon County held arguments on November 29, 1994, on the parties' respective motions for judgment on the merits. The circuit court rendered its opinion on January 11, 1995, granting the motion of respondents Smith and Joyce. The petitioners filed a timely notice of appeal with the First District Court of Appeal of Florida on February 10, 1995, and on January 4, 1996, the district court of appeal issued an opinion affirming the decision of the circuit court by a 2-1 margin.

The petitioners filed a Notice to Invoke Discretionary Jurisdiction in a timely manner, followed by submittal to the Supreme Court of Florida of the petitioners' and respondents' briefs on jurisdiction. The Florida Supreme Court accepted jurisdiction on May 3, 1996, and after submittal of briefs and oral argument, on December 5,

1996, the state supreme court issued its decision approving the decision of the First District Court of Appeal. On February 17, 1997, the Supreme Court of Florida denied the petitioners' Petition for Rehearing.

NOTE REGARDING RESPONDENT PARTIES

Since this case began, Sandra Mortham was elected Secretary of State of Florida, and David Rancourt is now the Director of the Division of Elections. Formal substitution of respondents was not necessary, since the case concerned actions taken by the respondents in their official capacities only.

REASONS FOR GRANTING THE WRIT

I. The Decision of the Supreme Court of Florida Is Erroneous

A. The Supreme Court of Florida incorrectly relied upon precedent supporting laws used to ascertain whether a "modicum of public support" exists to justify ballot placement, while the case sub judice concerns a ballot-qualified minor party candidate whose party already had demonstrated the required "modicum of public support" and had earned ballot placement.

Despite that the Florida Supreme Court recognized that the challenged law was not a ballot-access law (*Libertarian Party of Florida v. Smith*, 687 So.2d 1292, 1294), the

court invoked ballot-access-related interests such as "preventing factionalism and a multiplicity of parties" (*Libertarian Party of Florida v. Smith*, 687 So.2d at 1295), fostering "only the participation in the political arena of stable, established parties," (*Libertarian Party of Florida v. Smith*, 687 So.2d at 1296), and "strengthening and encouraging major parties, and thereby discouraging minor parties, as a means of preventing factionalism and the multiplicity of splinter groups" (*Libertarian Party of Florida v. Smith*, 687 So.2d at 1295) as legitimate interests for justification of the challenged law.

The petitioners assert that the Florida Supreme Court confused the legitimate purpose of ballot-access laws (e.g., petitioning standards and deadlines, "sore-loser" laws, party disaffiliation standards) which are used to ascertain whether a party or candidate has shown sufficient voter interest to justify ballot placement, and the legitimate purposes of election laws which do not concern ballot-access, such as the statute challenged in this case.

How a ballot-qualified candidate's filing fee is distributed has absolutely nothing to do with gauging public interest to ascertain whether a party or candidate merits placement on the ballot, preventing voter confusion, preventing a candidate from jumping from one party to another, or preventing intra-party factionalism.

While there are legitimate interests for assessing filing fees in general, such as offsetting election costs and fostering support of parties, these legitimate interests must be addressed by legitimate means. The challenged filing-fee distribution scheme does not legitimately

address those interests. As the Eleventh Circuit Court of Appeals has said,

> "A state might permissibly charge a non-discriminatory fee that advances the regulatory interest of reimbursing the state for its election expenses, particularly if it offers alternative avenues of ballot access, but it cannot use the fee to decide who deserves to be on the ballot."
>
> *Fulani v. Krivanek*, 973 F.2d 1539, 1547 (11th Cir. 1992).

In the case at issue, the challenged fee is **not** non-discriminatory; an inherent feature of the fee – how it is distributed after payment – is very much discriminatory. Furthermore, the Florida Supreme Court sanctioned the use of the filing fee to "decide who deserves to be on the ballot." Why? So that major parties can be strengthened, so that the electoral arena is left to "stable, established parties." This is constitutionally illegitimate; the use for filing fees to limit ballot length or access has been determined "extraordinarily ill-fitted to that goal." *Bullock v. Carter*, 405 U.S. 134, 146 (1972).

B. The discriminatory filing-fee distribution scheme harms the right of the Libertarian Party of Florida to financially develop and compete.

According to *Norman v. Reed*, 502 U.S. 279, 288 (1992), citizens have a "constitutional right . . . to create and develop new political parties." This right conflicts with the Florida Supreme Court's inordinate protection of older, established parties, and the Florida Supreme Court

failed to consider the issue of the right of minor political party development.

It is self-evident that the Libertarian Party of Florida's financial capacity to develop is harmed when it, as a minor party, is denied the same percentage of filing fees paid by its candidates for state and federal office as the major parties enjoy from the filing fees paid by their respective candidates for state and federal office. The funds received by the major parties carry no restrictions on their use (e.g., supporting candidates, voter outreach, public relations, advertising).

The right of a political party to develop obviously is affected by the flow of funds to it and its competitors. The challenged filing-fee law blatantly burdens minor parties and their candidates, to the advantage of "major" parties. The Florida Supreme Court did not follow appropriate precedent:

> "A burden that falls unequally on new or small parties . . . impinges, by its very nature, on associational choices protected by the First Amendment. It discriminates against those candidates and – of particular importance – against those voters whose political preferences lie outside the existing political parties. [citations omitted] By limiting the opportunities of independent-minded voters to associate in the electoral arena to enhance their effectiveness as a group, such restrictions threaten to reduce diversity and competition in the marketplace of ideas."
>
> *Anderson v. Celebrezze,* 460 U.S. 780, 793-794 (1983).

The fee-distribution scheme certainly threatens diversity and competition in the marketplace of ideas, by aiding state executive committees of major parties, to the financial and competitive detriment of minor parties which have placed candidates on the ballot. Furthermore, unlike the public financing scheme upheld in *Buckley v. Valeo*, 424 U.S. 1 (1976), under the Florida filing-fee scheme the major parties which benefit from the scheme do not have to accept a burden (such as a lower expenditure ceiling) not placed upon ineligible minor parties; in *Buckley*, the court itself noted that "the acceptance of public financing entails voluntary acceptance of an expenditure ceiling. Non-eligible candidates are not subject to that limitation." *Buckley*, 424 U.S. at 95.

The filing-fee distribution scheme is a byproduct of obtaining access to the ballot, a byproduct which harms the rights of minor parties to develop and compete.

C. The filing-fee distribution scheme imposes an unconstitutional condition on the political associative rights of the Libertarian Party of Florida and Robert Wilson, by effectively forcing Wilson to offset twice as much election-administration costs as his similarly-situated opponents from the major parties, entailing a violation of equal protection.

Robert Wilson was a Libertarian, his party's nominee for the State House of Representatives. Sufficient petition signatures were obtained to earn Wilson's ballot placement at the general election. As a condition for exercising his right to associate with the Libertarian Party of Florida by qualifying as a candidate, Wilson had to pay a filing

fee, all of which was retained by the government to offset election costs.

By comparison, the same amount of filing fee would be paid by major party candidates seeking the same office. However, the government retained slightly less than 50 percent of the filing fees paid by major party candidates seeking the same office as Robert Wilson. Simple deduction shows that the filing fee of Robert Wilson (and any other ballot-qualified minor party candidate for state or federal office) offset slightly more than twice the election costs than the filing fees paid by similarly-situated, major-party candidates for the same offices.

This case is roughly analogous to that involving a non-ballot-access election law which treated parties differently based upon party status. In *Socialist Workers Party v. Rockefeller,* 314 F.Supp. 984 (S.D.N.Y. 1970), *judgment aff'd,* 400 U.S. 806 (1970), voter registration lists were to be provided free of charge to county chairmen of parties which received at least 50,000 votes in the previous gubernatorial election; parties which did not meet that standard did not qualify for receipt of free lists.

The district court held that "constitutional strictures merely require that the State treat all groups similarly situated alike. The State is not required to provide such free of charge, but when it does so it may not provide them only for the large political parties and deny them to those parties which can least afford to purchase them." *Id.,* 314 F.Supp. at 996.

The state of Florida is not required to implement a fee-distribution scheme which provides funding for parties from the filing fees of ballot-qualified candidates; however, it is constitutionally repugnant to implement a scheme which conditions a minor party candidate's ballot placement on payment of a filing fee which does not aid his respective party, but which offsets more than twice the election costs offset by the filing fee of a similarly-situated major party candidate for the same office.

II. The Question Presented Is Important

Campaign finance reform is a matter of intense legal and public policy concern in Congress and state legislatures across the nation; this case presents an opportunity for the court to address campaign finance issues which affect not only the two major parties, but also political movements outside the two major parties (e.g., Ross Perot and the Reform Party, the Green Party and Green political movement, as well as the libertarian political movement) which have drawn the support of hundreds of thousands of American voters.

CONCLUSION

Applying the reasoning of the Supreme Court of Florida, virtually any punitive measure applied against minor parties which place candidates on the ballot would be constitutionally legitimate, because the magic phrases of "preventing a multiplicity of parties" and "preventing

factionalism and party-splitting" would cure almost any hint of constitutional ill.

And freedom of political association would be dealt an extraordinary blow.

The Supreme Court of Florida seriously misapplied legal precedent, invoking governmental interests legitimately relevant only to ballot-access laws and using those interests to justify a law which punishes minor parties which satisfy ballot-access requirements and place candidates on the ballot.

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Order of the Supreme Court of Florida; *The Libertarian Party of Florida, the Libertarian Party of Florida Executive Committee, and Robert Wilson vs. Jim Smith, in his official capacity as Secretary of State, and Dorothy Joyce, in her official capacity as Director of the Division of Elections,* rendered December 5, 1996 (No. 87,342) ..... App. 1

Opinion of the District Court of Florida, First District; *The Libertarian Party of Florida, the Libertarian Party of Florida Executive Committee, and Robert Wilson v. Jim Smith, in his official capacity as Secretary of State, and Dorothy Joyce, in her official capacity as Director of the Division of Elections,* rendered January 4, 1996 (No. 95-547) .. App. 9

Order of Final Judgment, In the Circuit Court for the Second Judicial Circuit in and for Leon County; *The Libertarian Party of Florida, the Libertarian Party of Florida Executive Committee, and Robert Wilson vs. Jim Smith, in his official capacity as Secretary of State; Dorothy Joyce, in her official capacity as Director of the Division of Elections,* rendered January 11, 1995 (Case No. 93-5017 CIV) ..... App. 15

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Supreme Court of Florida

No. 87,342

THE LIBERTARIAN PARTY OF FLORIDA,
THE LIBERTARIAN PARTY OF FLORIDA
EXECUTIVE COMMITTEE, and
ROBERT WILSON,

Petitioners

vs.

JIM SMITH, in his official capacity as Secretary of State, and DOROTHY JOYCE, in her official capacity as Director of the Division of Elections,

Respondents

[December 5, 1996]

PER CURIAM

We have for review a decision of the district court that expressly declares a state statute valid. *Libertarian Party of Florida v. Smith*, 665 So.2d 1119 (Fla. 1st DCA 1996). We have jurisdiction under article V, section 3(b)(3) of the Florida Constitution and approve the district court's decision below.

In this case, the Libertarian Party of Florida, its executive committee, and a Libertarian candidate for the Florida House of Representatives sought reversal in the district court of a final judgment ruling against their complaint for declaratory and injunctive relief which challenged the constitutionality of section 99.103, Florida

Statutes (1993). The challenged statute excludes political parties with less than five percent of total registered voters – i.e., "minor political parties" – from receiving partial rebates of their candidates' filing fees.[1]

On appeal, petitioners argued that the statute violates the Equal Protection Clause because it is a discriminatory classification that unfairly burdens their fundamental First and Fourteenth Amendment right to associate politically by placing minor parties and their candidates at a competitive disadvantage vis-a-vis the two major parties. Petitioners also invoked their rights of political association and participation under article I, sections 1 and 5 of the Florida Constitution. The First District rejected petitioners' claims and upheld section 99.103(1) as valid under both the Florida and federal constitutions because the provision was reasonably related to the state's interest in preventing factionalism. 665 So.2d at 1121.

We agree with the First District that section 99.103(1) is subject to a sliding scale of constitutional review. As the district court concludes, section 99.103 is not a ballot access provision and, rather than being reviewed under a "strict scrutiny" test, the provision falls at the low end of the spectrum of constitutional review. Moreover, we also agree that, at least in the context of this case, petitioners' rights to political association under article I, sections 1 and 5 of the Florida Constitution are no greater than

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[1] A party with less than five percent of Florida's total registered voters is elsewhere defined as a "minor political party." *See* sec. 97.021(15), Fla. Stat. (1995).

petitioners' analogous rights under the First and Fourteenth amendments to the United States Constitution.

As to these preliminary issues then, we adopt in toto [sic] the First District's analysis as follows:

> The statute under attack is subject to a flexible standard of scrutiny which ranges from strict scrutiny to a rational basis analysis, depending on the circumstances. *Fulani v. Krivanek*, 973 F.2d 1539, 1543 (11th Cir. 1992). In our inquiry we must weigh the character and magnitude of the asserted injury to the plaintiffs' First and Fourteenth Amendment rights against the precise interests advanced by the state in support of the statute, taking into consideration the extent to which those interests make it necessary to burden the plaintiffs' rights. *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S. Ct. 1564, 1570, 75 L.Ed. 2d 547 (1983); *see Fulani v. Smith*, 640 So.2d 1188 (Fla. 1st DCA 1994), *rev. denied* 651 So.2d 1193 (Fla. 1995). The rigorousness of our inquiry depends upon the extent to which the challenged statute burdens First and Fourteenth Amendment rights; severe restrictions must be narrowly tailored to advance compelling interests, while "reasonable, nondiscriminatory restrictions" need only advance important interests. *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S. Ct. 2059, 2063-2064, 119 L.Ed. 2d 245 (1992) (quoting *Anderson, supra*, 460 U.S. at 788, 103 S.Ct. at 1570).
>
> The challenged statute is not a ballot access provision that ordinarily implicates substantial voting, associational and expressive rights protected by the First and Fourteenth Amendments. See *Illinois Board of Elections v. Socialist Workers*

Party, 440 U.S. 173, 184, 99 S. Ct. 983, 990, 59 L.Ed. 2d 230 (1979); *McLaughlin v. North Carolina Bd. of Elections*, 65 F.3d 1215, 1221 (4th Cir. 1995). Rather, sec. 99.103 is merely an appropriation of some portion of the filing fees that both sides concede are lawfully collected from candidates for office. The rigidity of our examination is lessened where, as here, we move further away from impacting voting and associational rights. Consequently, we must determine whether the rule set forth in sec. 99.103 is reasonably related to an important state interest. [FN3]

[FN3.] We are not persuaded by the appellants' contention that we must apply strict scrutiny because the statute discriminates against minor parties. The appellants cited *Libertarian Party of Indiana v. Marion County*, 778 F. Supp. 1458 (S.D. Ind. 1991), in support of strict scrutiny. There, the court struck down a provision in the state election law allowing major parties to obtain free copies of voter registration lists while minor parties had to obtain the lists at their own expense. Although the court considered whether a stricter standard of review should be used to judge "discriminatory" statutes, the question was not decided. The state's failure to present any important interest to support its rule meant that the statute must fall under either standard. Even if the court had opted for strict scrutiny, the case would be distinguishable given the court's finding that restricting access to voter registration lists impinged upon associational rights.

We are aware that in *Burdick* and *Anderson* the Court noted that lessened scrutiny would

> apply to "reasonable, *nondiscriminatory* restrictions." However, we do not agree with the appellants' suggestion that this language mandates strict scrutiny whenever a "discriminatory" provision is challenged on equal protection grounds, regardless of the degree to which a party's First and Fourteenth Amendment rights are implicated. Equal protection was not implicated in *Burdick* or *Anderson* and would make little sense to impose strict scrutiny whenever some aspect of a challenged election law could be described as discriminatory. This would be tantamount to imposing strict scrutiny in all such cases, since some form of discriminatory classification is the impetus for any equal protection challenge. Of course, an equal protection analysis only begins with a finding that the challenged provision contains a discriminatory classification; it then remains to be determined whether the classification or "discrimination" is supported by a sufficiently important state interest, and whether and to what extent the provision is necessary to advance that interest. We thus conclude that where equal protection is raised, the reference to "reasonable, nondiscriminatory restrictions" must mean that lessened scrutiny will be applied to statutes that do not have substantial discriminatory impact upon voting, associational and expressive rights protected by the First and Fourteenth Amendments.

Smith, 665 So.2d at 1121.

We also agree with the First District's conclusion that section 99.103(1) is reasonably related to the state's important interest in strengthening and encouraging major parties, and thereby discouraging minor parties, as

a means of preventing factionalism and the multiplicity of splinter groups. As the district court correctly explains, even though the section 99.103(1) rebate provision may not be "necessary or essential to the state's interest," the provision is, however, "reasonably related" to it. We also adopt the First District's analysis finding that section 99.103(1) is constitutional:

> The state interest asserted to support the statute is a desire to to [sic] strengthen and encourage major parties as a means of preventing factionalism and a multiplicity of splinter parties. Such an interest has been deemed important. *See Burdick, supra,* 504 U.S. at 439, 112 S. Ct. at 2066; *Wetherington v. Adams,* 309 F.Supp. 318, 321 (N.D. Fla. 1970); *Boudreau v. Winchester,* 642 So.2d 1, 3 (Fla. 4th DCA 1994), *rev.denied,* 651 So.2d 1192 (Fla. 1995). In *Storer v. Brown,* 415 U.S. 724, 736, 94 S. Ct. 1274, 39 L. Ed. 2d 714 (1974), the Supreme Court declared that this interest was "not only permissible, but compelling."
>
> As to whether sec. 99.103 is reasonably related to the state's interest, the appellants argue that once the minor party candidate qualified to be on the ballot by obtaining the petition signatures of the required number of voters, all concerns about factionalsim and splinter parties should have been satisfied. It is probably true that the interest in preventing factionalism is best effectuated by petition requirements and other limitations on ballot access. [FN4]
>
> [FN4.] We have rejected the Libertarian Party's challenge to the constitutionality of the 3 percent petition requirement in section 99.096(2), Florida Statutes (1993). *See Libertarian Party of*

Florida v. Smith, 660 So.2d 807 (Fla. 1st DCA 1995).

> This does not mean, however, that the interest cannot also be advanced by limiting rebates of major party candidates' filing fees to their respective parties' executive committees "for the purpose of meeting . . . expenses." Sec. 99.103(1), Fla. Stat. (1993). The appellants may have shown that the statute is not necessary or essential to the state's interest, so we are only concerned with whether the statute is reasonably related to the interest asserted. Because we believe it is so related, we reject appellants' attack and uphold the challenged provision.

Smith, 665 So.2d at 1121-1122.

In this case, we initially find petitioners' argument – that once a minor party candidate has fulfilled all ballot access requirements and has his or her name on the ballot, as petitioner did in this case, the state's goal of promoting major parties and preventing factionalism is not effectively achieved through the section 99.103(1) rebate provision – to be an attractive one. Yet, the threshold for the constitutionality of this statute is a low one, and the wisdom behind the State's policy choice in enacting section 99.103 is not subject to our review here. Rather, we are faced with the fact that the legislature has set up an affirmative scheme to support and encourage major parties by returning to those parties a substantial portion of their filing fees. Within that scheme, the legislature has set up a threshold requirement that only parties with the support of five percent or more of registered voters may receive such rebates. This threshold requirement, of course, fosters only the participation in the

political arena of stable, established parties. We cannot disagree, however, that the State has an interest in doing this and this scheme furthers its goal.[2]

Consequently, we approve the decision and analysis of the district court below.

It is so ordered.

LOGAN, C.J., and OVERTON, SHAW, GRIMES, HARDING, WELLS and ANSTEAD, JJ., concur.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

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[2] This scheme seems to us to be akin to the federal scheme for presidential campaign financing which imposes similar requirements for governmental financial support. For instance, under the federal scheme, a minor party presidential candidate must also demonstrate a certain minimum threshold of national support before the candidate may receive public financing at the same level that accrues automatically to major party candidates. *See generally,* 26 U.S.C. sec. 9004 (1994).

District Court of Appeal of Florida,
First District

No. 95-547

THE LIBERTARIAN PARTY OF FLORIDA,
THE LIBERTARIAN PARTY OF FLORIDA
EXECUTIVE COMMITTEE, and
ROBERT WILSON,

Appellants

vs.

JIM SMITH, in his official capacity as Secretary of State, and DOROTHY JOYCE, in her official capacity as Director of the Division of Elections,

Appellees

[January 4, 1996]

PER CURIAM

Appellants, the Libertarian Party of Florida, its executive committee, and a Libertarian candidate for the Florida House of Representatives seek reversal of a final judgment ruling against their complaint for declaratory and injunctive relief which challenged the constitutionality of section 99.103, Florida Statutes (1993). The challenged statute excludes political parties with less than 5 percent of total registered voters – i.e., "minor political parties" – from receiving partial rebates of their

candidates' filing fees.[1] It is undisputed that were it not for the Libertarian Party's status as a minor party, the challenged statute would entitle its executive committee to a rebate of approximately half of its candidates' filing fees. The appellants claim that the statute violates the Equal Protection Clause because it is a discriminatory classification that unfairly burdens their fundamental First and Fourteenth Amendment right to associate politically by placing minor parties and their candidates at a competitive disadvantage vis-a-vis the two major parties.[2] We reject appellants' contention, and affirm.

The statute under attack is subject to a flexible standard of scrutiny which ranges from strict scrutiny to a rational basis analysis, depending on the circumstances. *Fulani v. Krivanek*, 973 F.2d 1539, 1543 (11th Cir. 1992). In our inquiry we must weigh the character and magnitude of the asserted injury to the plaintiffs' First and Fourteenth Amendment rights against the precise interests advanced by the state in support of the statute, taking into consideration the extent to which those interests

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[1] A party with less than five percent of Florida's total registered voters is elsewhere defined as a "minor political party." *See* sec. 97.021(15), Fla. Stat. (1995).

[2] The appellants have also invoked the rights of political association and participation in article I, section 1 and 5 of the Florida Constitution. Because they fail to cite authority indicating that their Florida rights are more extensive than those provided under the U.S. Constitution, and we are aware of no separate analysis applicable to the challenged statute under our state constitution, we agree with the trial court's ultimate assessment of these claims. "Since it passes muster under the U.S. Constitution, sec. 99.103 also passes muster under the Florida Constitution."

make it necessary to burden the plaintiffs' rights. *Anderson v. Celebrezze*, 460 U.S. 780, 789, 103 S.Ct. 1564, 1570, 75 L. Ed. 2d 547 (1983); *see Fulani v. Smith*, 640 So.2d 1188 (Fla. 1st DCA 1994), *rev. denied*, 651 So.2d 1193 (Fla. 1995). The rigorousness of our inquiry depends upon the extent to which the challenged statute burdens First and Fourteenth Amendment rights; severe restrictions must be narrowly tailored to advance compelling interests, while "reasonable, nondiscriminatory restrictions" need only advance important interests. *Burdick v. Takushi*, 504 U.S. 428, 434, 112 S.Ct. 2059, 2063-2064, 119 L. Ed.2d 245 (1992) (quoting *Anderson, supra*, 460 U.S. at 788, 103 S.Ct. at 1570).

The challenged statute is not a ballot access provision that ordinarily implicates substantial voting, associational and expressive rights protected by the First and Fourteenth Amendments. *See Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 99 S. Ct. 983, 990, 59 L. Ed.2d 230 (1979); *McLaughlin v. North Carolina Bd. of Elections*, 65 F.3d 1215, 1221 (4th Cir. 1995). Rather, sec. 99.103 is merely an appropriation of some portion of the filing fees that both sides concede are lawfully collected from candidates for office. The rigidity of our examination is lessened where, as here, we move further away from impacting voting and associational rights. Consequently, we must determine whether the rule set forth in sec. 99.103 is reasonably related to an important state interest.[3]

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[3] We are not persuaded by the appellants' contention that we must apply strict scrutiny because the statute discriminates against minor parties. The appellants cited *Libertarian Party of*

The state interest asserted to support the statute is a desire to strengthen and encourage major parties as a

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Indiana v. Marion County, 778 F. Supp. 1458 (S.C. Ind. 1991), in support of strict scrutiny. There, the court struck down a provision in the state election law allowing major parties to obtain free copies of voter registration lists while minor parties had to obtain the lists at their own expense. Although the court considered whether a stricter standard of review should be used to judge "discriminatory" statutes, the question was not decided. The state's failure to present any important interest to support its rule meant that the statute must fall under either standard. Even if a court had opted for strict scrutiny, the case would be distinguishable given the court's finding that restricting access to voter registration list impinged upon associational rights. We are aware that in *Burdick* and *Anderson* the Court notes that lessened scrutiny would apply to "reasonable, *nondiscriminatory* restrictions." However, we do not agree with the appellants' suggestion that this language mandates strict scrutiny whenever a "discriminatory" provision is challenged on equal protection grounds, regardless of the degree to which a party's First and Fourteenth Amendment rights are implicated. Equal protection was not implicated in *Burdick* or *Anderson*, and would make little sense to impose strict scrutiny whenever some aspect of a challenged election law could be described as discriminatory. This would be tantamount to imposing strict scrutiny in all such cases, since some form of discriminatory classification is the impetus for any equal protection challenge. Of course, an equal protection analysis only begins with a finding that the challenged provision contains a discriminatory classification; it then remains to be determined whether the classification or "discrimination" is supported by a sufficiently important state interest, and whether and to what extend [sic] the provision is necessary to advance that interest. We thus conclude that where equal protection is raised, the reference to "reasonable, nondiscriminatory restrictions" must mean that lessened scrutiny will be applied to statutes that do not have substantial discriminatory impact upon voting, associational and

means of preventing factionalism and a multiplicity of splinter parties. Such an interest has been deemed important. *See Burdick, supra* 504 U.S. at 439, *Wetherington v. Adams,* 309 F.Supp. 318, 321 (N.D. Fla. 1970); *Boudreau v. Winchester,* 642 So.2d 1, 3 (Fla. 4th DCA 1994), *rev. denied* 651 So.2d 1192 (Fla. 1995). In *Storer v. Brown,* 415 U.S. 724, 736, 94 S.Ct. 1274, 1282, 39 L.Ed. 2d 714 (1974), the Supreme Court declared that this interest was "not only permissible, but compelling."

As to whether sec. 99.103 is reasonably related to the state's interest, the appellants argue that once the minor party candidate qualified to be on the ballot by obtaining the petition signatures of the required number of registered voters, all concerns about factionalism and splinter parties should have been satisfied. It is probably true that the interest in preventing factionalism is best effectuated by petition requirements and other limitations on ballot access.[4] This does not mean, however, that the interest cannot also be advanced by limited rebates of major party candidates' filing fees to their respective parties' executive committees "for the purpose of meeting . . . expenses." Sec. 99.103(1), Fla. Stat. (1993). The appellants may have shown that the statute is not necessary or essential to the state's interest, but we are only concerned with whether the statute is reasonably related to the

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expressive rights protected by the First and Fourteenth Amendments.

[4] We have rejected the Libertarian Party's challenge to the constitutionality of the 3 percent petition requirement in section 99.096(2), Florida Statutes (1993). *See Libertarian Party of Florida v. Smith,* 660 So.2d 807 (Fla. 1st DCA 1995).

interest asserted. Because we believe it is so related, we reject appellants' attack and uphold the challenged provision.

Accordingly, the judgment is AFFIRMED.

MINER and WEBSTER, JJ. concur.

BOOTH, J., dissents with written opinion.

BOOTH, Judge, dissenting.

I am persuaded by Appellants' arguments and authorities cited that Florida Statute section 99.103 is unconstitutional as applied to prevent minor parties from receiving partial rebates of their candidates' filing fees. I must, therefore, respectfully dissent.

IN THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT IN AND FOR LEON COUNTY

the LIBERTARIAN PARTY OF FLORIDA;
the LIBERTARIAN PARTY OF FLORIDA
EXECUTIVE COMMITTEE; and
ROBERT WILSON,

Plaintiffs

vs. CASE NO. 93-5017 CV

JIM SMITH, in his official capacity
as Secretary of State; DOROTHY JOYCE
in her official capacity as Director
of the Division of Elections,

Defendants

ORDER OF FINAL JUDGMENT

This cause came before the court on the parties' respective motions for final judgment on the merits. Plaintiffs challenge the constitutionality of sec. 99.103, Florida Statutes on First Amendment and Equal Protection grounds under the U.S. Constitution. They also contend that sec. 99.103 violates their rights of political association and participation under Art. I, section 1 and section 5 of the Florida Constitution.[1]

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[1] Originally, the plaintiffs included Richard Vajs, the Libertarian Party's candidate for the U.S. House of Representatives, First District. When Vajs did not obtain enough signatures to be on the ballot, Plaintiffs filed a second amended complaint to substitute Robert Wilson for Vajs. Wilson was the Libertarian Party's candidate for the Florida House, District 4. Otherwise, the facts alleged in the original complaint did not materially change. References to the "complaint" are to the second amended complaint.

I. FINDINGS OF FACT

The parties agreed to the material facts, through a stipulation and supporting exhibits filed October 25, 1994. The court finds those facts facially reasonable and adequately supported, and adopts them by reference. For convenience, the stipulated facts are set forth:

The Division of Elections [Dept. of State] has registered the Libertarian Party of Florida as a minor political party. The party has filed, with the Department of State, the required Statement of Organization required under sec. 97.021(15), Florida Statutes.

The Libertarian Party has formed an executive committee. At the last three annual conventions, 1992-1994, at least three-fourths of the committee members were elected at each convention.

Robert Wilson is the Libertarian Party of Florida's candidate in the 1994 general election for District 4 of the Florida House of Representatives. As part of qualifying for that race, Wilson paid a fee of $1,278.42 to the Department of State. Wilson has qualified to appear on the November 8, 1994 general election ballot. [cites to exhibits omitted]

II. CONCLUSIONS OF LAW

1. Introduction

A political party which does not include at least 5% of the state's registered electors is defined as a "minor political party." Sec. 97.021(15), Fla. Stat. "Major" political parties are not separately defined. However, the statute at issue expressly limits rebates of filing fees to executive committees of parties including at least "5 per cent of the

total registration of such counties." Sec. 99.103(1). For convenience, such parties will be referred to as "major" parties.

Major party candidates must pay a qualifying fee under sec. 99.061. Alternatively, under sec. 99.095, major party candidates may obtain verified signatures of at least 3% of that party's electors.

In contrast, minor party candidates must obtain verified signatures of "3 percent of the registered electors of state" or "geographical entity represented by the office." Signatures for minor party candidates are not limited to registered electors affiliated with the minor party. Sec. 99.096.

When a minor party candidate, under written oath, certifies that the qualifying fee would impose an "undue burden on his personal resources or upon resources otherwise available," that candidate is exempted from paying the fee. Sec. 99.096(5). Otherwise, such candidate will pay the same qualifying fee as a major party candidate for the same office.

Statutory treatment of qualifying fees is found in several places. Under sec. 99.092, a qualifying fee has three components: a *filing* fee, an election assessment, and a party assessment when applicable.[2] The filing fee component represents 4.5% of the salary of the office sought.

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[2] The election assessment and party assessment components are not at issue here.

Initially, the state retains one-third of the filing fee (i.e., 1.5% of the salary of the office) paid by any candidate, and transfers that amount to the Election Campaign Finance Trust Fund. Sec. 99.092(1). The remainder is distributed pursuant to sec. 99.103. *Id.*

Under sec. 99.103(1), the state executive committee of a political party receives a rebate of part[3] of the remaining two-thirds of the filing fee when two conditions are met. First, three fourths of that committee must have been elected at the last previous election for committee members. Second, the party must be comprised of at least 5% of the registered voters "of the counties." Effectively, the executive committees of *major* political parties only are eligible to receive a rebate of filing fees.

2. Standard of Review

Section 99.103, Fla. Stat. is a codified exercise of the Legislature's appropriations power. The statute directs that State revenue (filing fees) be appropriated to specific issues. Part of such revenue goes to the Election Campaign Trust Fund; part to the General Revenue Fund; and part to rebate.

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[3] The rebate is specified under sec. 99.103(1) to be filing fee minus the one-third already transferred to the Election Campaign Financing Trust Fund, and minus 15% (of the two-thirds remaining) transferred to general revenue. Under sec. 99.103(2), the rebate consists of 95% of what is left. Mathematically, this works out as the filing fee x .67 x .85 x .95, or about 53%.

Section 99.103 does not regulate the content of manner of speech, or the ability to seek redress from governmental action. It does not address the formation of a political party, and does not regulate a candidate's choice of parties. As Plaintiffs concede, it does not regulate ballot access.[4]

The obligation to pay, and the amount of, filing fees are established by other statutes not at issue. The statute has no real bearing on Plaintiffs' rights of political association. Plaintiff Wilson chose to associate with the Libertarian Party despite the fact that the party's executive committee was not eligible for a rebate.

Plaintiffs acknowledge that the "State of Florida is not required to craft a statutory scheme by which *any* political party is entitled to a portion of its candidates' filing fee." [e.s.] (motion for summary judgment, p. 13).[5] Of itself, the rebate or retention of filing fees does not implicate the U.S. or Florida Constitutions.

At most, the issue is simply whether sec. 99.103 creates an unreasonable classification. That issue does not invoke strict scrutiny. To the contrary, the statute's First Amendment implications are so minimal that a rational basis test applies. *Anderson v. Celebrezze*, 460 U.S. 780, 103

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[4] Plaintiffs' motion for summary judgment (p.9) declares: "The election law being challenged is not a ballot-access law; that is a significant factor in this case."

[5] Plaintiffs' motion for summary judgment will be cited as "MSJ", p.___.

S.Ct. 1564, 75 L.Ed.2d 547) (1983) and refined[6] in later cases. *See Burdick v. Takushi*, ___ U.S. ___, 112 S.Ct. 2059, 2063, 119 L.Ed.2d 245 (1992) (the appropriate standard for evaluating a claim that a state law burdens the right to vote is set forth in *Anderson*); *Talshjian v. Republican Party of Conn.*, 479 U.S. 209, 213, 107 S.Ct. 544, 93 L.Ed.2d 514 (1986) (courts must identify legitimacy of interests advanced by state and consider the extent to which they necessitate burdening voter rights [citing *Anderson*]); *Fulani v. Krivanek*, 973 F.2d 1539, 1543 (11th Cir. 1992) (noting that the *Anderson* test, rather than strict scrutiny, applies to a ballot-access case; and describing that test as one which "ranges from strict scrutiny to a *rational-basis* analysis, depending on the circumstances." [e.s.]).

3. Section 99.103 Under the U.S. Constitution

As part of their First and Fourteenth Amendment claims, Plaintiffs urge the Party is "burdened" because the major parties receive a financial advantage; and that sec. 99.103 drains minor parties' resources and thus reinforces the "duoploy" of the Democrat and Republican parties. (MSJ, p. 4) Plaintiffs further urge that the statute damages the Libertarian Party's right to compete with other parties. Finally, Plaintiffs contend that the statute penalizes individual, minor party party candidates by forcing them to bear or offset election costs to a greater degree than major party candidates. (MSJ, p. 5)

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[6] Plaintiffs' motion for summary judgment, (p. 7) also urges this court to employ a "refined" *Anderson* test.

Plaintiffs have not adduced facts that would support such speculative claims; the parties to this case have not so stipulated. There is nothing in the record that would allow this court to conclude the statute drains Wilson and the Libertarian Party's resources, etc. *See Buckley v. Valeo*, 424 U.S. 1, 993 at n. 126, 96 S.Ct. 612, 640 at n. 126 (claim that public funding of presidential campaigns would lead to government control of political parties' internal affairs "wholly speculative")); and *Id.*, 424 U.S. at 99 & n. 134, 96 S.Ct. at 673 & n. 134 (rejecting claim that one aspect of election funding law disadvantaged non-major parties, in part because "whatever merit the point may have . . . is questionable on the basis of the record before the court.").

The Libertarian Party's statewide executive committee would have received less than $700.00[7] if it had been eligible for a rebate from Wilson's filing fee. Moreover, this money was paid by Wilson; the executive committee was not required to pay anything.

Wilson's decision to use much of his early campaign resources[8] to pay a filing fee indicates that the fee must not have been so debilitating as Plaintiffs now describe. Also, it would seem that any Libertarian Party candidate – if the party's resources are so limited – could avoid the fee pursuant to the "undue burden . . . upon resources

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[7] The parties stipulated that Wilson paid a filing fee of $1278.42; fifty-three percent of which is $677.56.

[8] As of July 29, 1994, Wilson reported only $1,550 in his campaign account. Of that, he used $1,278.42 for his filing fee. *See* Ex. C of the parties Joint Stipulation.

otherwise available" provision of sec. 99.095(5). The ability to avoid the fee weighs heavily in favor of the constitutionality of sec. 99.103. *See Lubin v. Parish*, 415 U.S. 709, 717-19, 94 S.Ct. 1315, 1320-1, 39 L.Ed.2d 702 (1974) (absence of alternative to qualifying fee rendered California's election system so exclusionary as to candidates' unable to pay); *Little v. Fla. Dept. of State*, 19 F.3d 4, 5 (11th Cir. 1994) (upholding Florida election law for judicial candidates, and noting that the law provided an alternative to filing fee).

In *Buckley*, the Court addressed the constitutionality of a campaign finance act limiting political contributions and providing an election campaign checkoff on federal tax returns. The Court rejected, among others, the argument that equal protection required Congress to permit taxpayers to designate particular candidates or parties as recipients of their money:

> The appropriation . . . is like any other appropriation from the general revenue except that its amount is determined by reference to the aggregate of the one- and two-dollar authorization on taxpayers' income tax returns. This detail does not constitute the appropriation any less than an appropriation by Congress. The fallacy of appellants' argument is therefore apparent; every appropriation made by Congress uses public money in a manner to which some taxpayers object.

Id., 424 U.S. at 91-92, 96 S.Ct. at 669.

A close look at the public campaign financing law (subtitle H of the 1974 Internal Revenue Code) at issue in *Buckley* goes far to sustain the statute challenged here.

Subtitle H established criteria for receipt of public money according to party size. Parties were classified as "major", "minor" or "new." Major parties were those whose most recent candidate for President received at least 25% of the vote. Minor parties were those whose candidates received less than 25%, but at least 5% of the vote.[9] All other parties were considered to be new. *Id.*, 424 U.S. at 87-8, 96 S.Ct. at 667. Only major and minor parties received public money for presidential nominating convention expenses. New parties received nothing. *Id.*

For the presidential campaigns themselves, the major party candidates received up to $20 million before the general election. Minor party candidates received, also before the election, a lesser amount based on votes received in the last election in relation to the votes received by the major parties. New party candidates could not receive any money until after the general election. Then, their share was computed under the same method as for minor parties – if they received at least 5% of the vote in the general election. *Id.*, 424 U.S. at 88-9, 96 S.Ct. at 667-8.

In short, new party candidates were denied any pre-election public funding. If they did not get at least 5% of the popular vote, they did not get any public money.

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[9] Interestingly, the federal 5% threshold – the *least* proportion of the vote for a party to be considered "minor" – coincides with Florida's longer-established threshold for a party to be considered "major". A minor party under federal law would be a major party under Florida law.

Here, the Florida legislature has denied pre-election public funding (i.e., rebates) to political parties that do not have at least 5% of the registered voters. If Congress can deny public money based on the number of votes received in an earlier election, the Florida Legislature can deny rebates to parties which include less than 5% of the registered voters.

Plaintiffs do not attack the 5% amount as unreasonable. They do not attack the Florida Legislature's decision to based eligibility on a party's pre-election size rather than votes actually case for that party in an earlier election. They concede that the Legislature could retain all filing fees, thereby denying rebates to all parties.

All that is opposed by Plaintiffs is the fact that minor parties cannot receive public money. Plaintiffs' arguments against sec. 99.103 are essentially no different from the arguments that were unsuccessful in *Buckley*. Plaintiffs too must fail.

As the challenged statute declares, its purpose is to assist the state executive committees of the major parties meet their "expenses." Sec. 99.103(1). By rebating fees to those committees, the Legislature financially encourages or strengthens major parties. In so doing, it discourages factionalism and a multiplicity of splinter parties. Such considerations were sufficient to justify certain ballot access provisions in California. *See Storer v. Brown*, 415 U.S. 724, 736, 94 S.Ct. 1274, 1282 (1974) ("California apparently believes with the Founding Fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government."). If discouraging factionalism is sufficient to sustain a law

affecting a candidate's ability even to get onto the ballot, then it must also be sufficient to sustain a far more peripheral law as to rebate of filing fees. See *McNamee v. Smith,* 19 Fla.L. W. D1286 (Fla. 1st DCA June 7, 1994) (upholding the "constitutionality of the filing fee, election assessment and party assessment scheme found in sections 99.061(1), 99.092 and 99.103, Florida Statutes.").

In *Boudreau v. Winchester,* 19 Fla.L. W. D1247 (Fla. 4th DCA June 8, 1994), the Fourth District addressed the propriety of a qualifying fee, not its later use. Boudreau attacked the fee and party assessment required by sec. 99.061(1), Florida Statutes (1993). He claimed those fees were unconstitutional to the extent portions were remitted to the Republican Party and the state election commission trust fund; thereby forcing him to support candidates of an opposing party in violation of his First Amendment rights. *Id.* He also claimed the party assessment infringed upon his freedom of association, because it called for more participation in the state party than he chose. *Id.*

The Fourth District rejected Boudreau's arguments, and found that the state's interesting in fostering political activity; guarding against factionalism; and avoiding chaotic elections justified the fees. *Id.* The court attached significance to the fact that Florida's statutory scheme allowed a candidate to run as an independent or choose an alternative means of reaching the ballot, thereby avoiding the filing fee and party assessment altogether. It upheld the assessment for the reasons expressed in *Buckley v. Valeo. Id.*

The *Boudreau* court then went straight to the heart of its (and this) case. It recognized that the statutory scheme is "essentially no different from the payment of filing fees . . . and an appropriation." *Id.* at D1248. The court followed with this observation:

> To the extent such funding is just like any other appropriation, *Buckley* applies.

Id. Concluding the opinion, the Fourth District cited to two federal cases – *Burdick* and *Wetherington v. Adams*, 309 F.Supp. 318 (N. D. Fla. 1970) – for the proposition that the state's interest in "fostering political parties' activity" can be a basis for upholding filing fees; and that the state has an interest in "guarding against splintered parties and factionalism." *Id.*

Applying a rational basis test, sec. 99.103 can reasonably be said to discourage factionalism through financial support of the executive committees of major political parties. Numerous federal and state decisions have held that discouraging factionalism is a rational basis for ballot access statutes. While the effectiveness of the rebates is open to question; such a question goes only to the statute's *wisdom*, not its legality. See *McNamee*, 19 Fla.L. W. at D1286 (noting that decision was "limited to the legality [not] . . . the wisdom of the challenged scheme."). Section 99.103 is sound under the U.S. Constitution.

4. Section 99.103 Under The Florida Constitution

Plaintiffs contend they have a separate right of political association and participation under the Florida Constitution, and that sec. 99.103 violates this right. They rely on *State v. Dodd*, 561 So.2d 263 (Fla. 1990). That decision,

which declared unconstitutional a statute prohibiting the acceptance of campaign contributions during legislative sessions, recognized that free speech and associational rights were protected under both the federal and Florida constitutions. *Id.* at 264. At no time, however did *Dodd* consider whether such rights were broader under the Florida Constitution. Instead, *Dodd* cited only one Florida case, and relied heavily on several U.S. Supreme Court decisions.

Plaintiffs do not allege that Wilson's individual right of participation ("candidacy") is broader under the Florida Constitution. Instead, they cite two marginal Florida cases. The first, *Treiman v. Malmquist,* 342 So.2d 972 (Fla. 1977) invalidated a law requiring a judicial candidate to have been registered to vote in Florida the last preceding general election. That law obviously involved a candidate's ability to get on the ballot. Here, a candidate must already be on the ballot to get a rebate, if a filing fee has been paid at all. While *Treiman* relied upon federal and state court decisions, it did not intimate that the Florida Constitution extends broader rights against allocation of public money than does the U.S. Constitution.

The decision in Plaintiffs' second case, *State ex rel. Siegendorf v. Stone,* 266 So.2d 345 (Fla. 1972), involved the sufficiency of a judicial candidate's qualifying papers. Finding the deficiency technical, the Court declared the candidate duly qualified. While the Court bolstered its decision by weighing the insignificant deficiency against the important right to participate in government by running for election, the decision did not turn on the constitutionality of any statute. It simply found that the

candidate had complied with the basic statutory requirements for qualifying.

Plaintiffs have not shown their Florida rights are more extensive than the federal. Since it passes muster under the U.S. Constitution, sec. 99.103 also passes muster under the Florida Constitution.

III. JUDGMENT

Plaintiffs have not shown that sec. 99.103, Florida Statutes, is unconstitutional. Therefore, the Defendants' motion for final judgment on the merits, declaring sec. 99.103 to be constitutional, is granted. Final judgment is entered in favor of the Defendants.

ORDERED this 11 day of January, 1995.

L. Ralph Smith

Circuit Court Judge

Supreme Court of Florida
Monday, February 17, 1997

The LIBERTARIAN PARTY
OF FLORIDA, et al.,

Petitioners

v.

JIM SMITH, etc., et al.,

Respondents

CASE NO. 87,342

District Court of
Appeal,
1st District No. 95-547

Petitioners' Motion for Rehearing filed in the above cause is hereby denied.

OVERTON, SHAW, HARDING, WELLS and ANSTEAD, JJ., concur.

A True Copy
TEST:

Sid J. White
Clerk, Supreme Court

TC
cc: Hon. Jon S. Wheeler, Clerk
Hon. Dave Lang, Clerk
Hon. L. Ralph Smith,
Judge

Mr. Daniel F. Walker
Mr. Charlie McCoy

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution amend. I:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

U.S. Constitution amend. XIV, sec. 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Florida Statute 99.103 (1993)

Department of State to remit part of filing fees and party assessments of candidates to state executive committee. –

> (1) If more than three-fourths of the full authorized membership of the state executive committee of any party was elected at the last previous election for such members and if such party is declared by the Department of State to have recorded on the registration books of the counties, as of the first Tuesday after the first Monday in January prior to the first primary in

general election years, 5 percent of the total registration of such counties when added together, such committee shall receive, for the purpose of meeting its expenses, all filing fees collected by the Department of State from its candidates less the amount transferred to the Election Campaign Financing Trust Fund pursuant to s. 99.092 and an amount equal to 15 percent of the filing fees after such transfer, which amount the Department of State shall deposit in the General Revenue Fund of the state.

(2) Not later than 20 days after the close of qualifying in even-numbered years, the Department of State shall remit 95 percent of all filing fees, less the amount transferred to the Election Campaign Financing Trust Fund pursuant to s. 99.092 and the amount deposited in general revenue pursuant to subsection (1), or party assessments that may have been collected by the department to the respective state executive committees of the parties complying with subsection (1). Party assessments collected by the Department of State shall be remitted to the appropriate state executive committee, irrespective of other requirements of this section, provided such committee is duly organized under the provisions of chapter 103. The remainder of filing fees or party assessments collected by the Department of State shall be remitted to the appropriate state executive committees not later than the date of the first primary.

(2)

Supreme Court, U.S.
FILED
JUN 10 1997
OFFICE OF THE CLERK

No. 96-1867

IN THE

Supreme Court of the United States

October Term, 1996

THE LIBERTARIAN PARTY OF FLORIDA, THE LIBERTARIAN PARTY OF FLORIDA EXECUTIVE COMMITTEE, and ROBERT WILSON,

Petitioners,

v.

JIM SMITH, in his official capacity as Secretary of State, and DOROTHY JOYCE, in her official capacity as Director of the Division of Elections,

Respondents'.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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18 pp

QUESTION PRESENTED

(Restated)

Whether §99.103, Florida Statutes, reasonably discourages factionalism in the election process by rebating part of the filing fees paid by major, but not minor, political party candidates.

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§97.021(12), Fla. Stat.	2

§99.061(1), Fla. Stat. 4
§99.092(1), Fla. Stat. 3
§99.096(5), Fla. Stat. 7
§99.103, Fla. Stat. . . . . *passim*

No. 96-1867

IN THE

Supreme Court of the United States

October Term, 1996

THE LIBERTARIAN PARTY OF FLORIDA, THE LIBERTARIAN PARTY OF FLORIDA EXECUTIVE COMMITTEE, and ROBERT WILSON,

Petitioners,

v.

JIM SMITH, in his official capacity as Secretary of State, and DOROTHY JOYCE, in her official capacity as Director of the Division of Elections,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

OPINIONS BELOW

Petitioners have correctly identified the opinions below.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1257(a). The judgment under review was rendered by the Florida Supreme Court on December 5, 1996. That court denied rehearing on February 17, 1997. The petition for a writ of certiorari was filed on May 16, 1997; and docketed on May 27.

STATEMENT OF THE CASE

Respondents accept Petitioners' statement of the case.

ARGUMENT

Section 99.103(1), Florida Statutes, provides that a portion of candidate filing fees, after collection, must be rebated to the executive committees of major—but not minor[1]—political parties. As the Party strongly urges, §99.103 is not a ballot *access* statute. Rather, the statute is a post-ballot measure reasonably designed to discourage factionalism through modest financial support of major parties only.

The Florida Supreme Court correctly recognized the challenged statute was not a ballot access provision, so that it was subject to lesser scrutiny than a statute imposing conditions for qualifying. *See Libertarian Party v. Smith,* 687 So.2d 1292, 1294 (Fla. 1996). (Pet. App. 2–3) In so doing, that court provided two strong reasons for this Court to decline review.

First, §99.103 simply does not play a major role in the array of statutes regulating Florida's election process. It does not establish conditions for forming a political party, qualifications for nomination of a candidate, or requirements for campaign finance and reporting. Second, and as explained below, the Florida Supreme Court properly applied precedent of this Court: *Anderson v. Celebreeze,* 460 U.S. 780 (1983), and *Burdick v. Takushi,* 504 U.S. 428 (1992). *See Libertarian Party,* 687 So.2d at 1294 (adopting rationale of lower court) (Pet. App. 3).

Nothing in the decisions announced by *any* court limits a State to preventing factionalism through ballot access measures only. Moreover, numerous federal and state decisions have held that discouraging factionalism is a rational basis for ballot access statutes, which raise far more serious First Amendment concerns. If discouraging factionalism is suffi-

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1 A minor party is defined under §97.021 (12), Florida Statutes (1995), to be a "group...[which] does not have registered as members 5 percent of the total registered electors of the state."

cient to sustain a law affecting a candidate's ability to get on the ballot, then it must also be sufficient to sustain a far more peripheral law as to rebate of filing fees.

The Florida Supreme Court properly rejected the Party's challenge to §99.103. The opinion of that court is correct and does not conflict with any decision of this Court. The Party does not contend the opinion conflicts with any decision of a federal court of appeals, or the supreme court of any state. Further review is not warranted. *See* Rule 10, Rules of the Supreme Court.

I. SECTION 99.103, FLORIDA STATUTES, REASONABLY DISCOURAGES FACTIONALISM IN THE ELECTION PROCESS BY REBATING PART OF THE FILING FEES PAID BY MAJOR, BUT NOT MINOR, PARTY CANDIDATES.

A. The Florida Supreme Court's Decision Was Correct

From the outset of this litigation in the state trial court, Respondents (the "Party") have failed to grasp that §99.103 is an appropriations law reasonably designed to discourage factionalism. It is a codified exercise of the Florida Legislature's appropriations power. In essence, the statute directs that State revenue—already collected through filing fees—be appropriated to specific uses. Part of such revenue goes to the Election Campaign Trust Fund; part to the General Revenue Fund; and part to rebates.[2]

Obviously, the Legislature has exercised its appropriations power in a manner that distinguishes between candidates of major and minor parties. Only the former can obtain re-

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2 Under §99.092(1), Fla. Stat., a qualifying fee has three components: a filing fee, an election assessment, and a party assessment when applicable. The filing fee component represents 4.5% of the salary of the office sought. Initially, the state retains one-third of the filing fee paid by any candidate, and transfers that amount to the Election Campaign Trust Fund. The remainder is distributed pursuant to §99.103.

bates.[3] Nevertheless, the matter at issue here is the allocation of revenue to specific uses—a power residing solely with the Legislature. *State v. Fla. Police Benevolent Assoc.*, 613 So.2d 415, 418 (Fla. 1992) ("Under the Florida Constitution, *exclusive* control over public funds rest (sic) solely with the legislature. [e.s.]").

Because it involves only the allocation of revenue, §99.103 must be reviewed under the least strict standard available when election-related laws are challenged. Ultimately, this test will be the "modified strict scrutiny" test announced in *Anderson v. Celebreeze*, 460 U.S. 780 (1983) and refined in later cases. *See Fulani v. Krivanek*, 973 F.2d 1539, 1543 (11th Cir. 1992) (noting that the *Anderson* test, rather than strict scrutiny, applies to a ballot-access case).

Over the past two decades, this Court has decided roughly a dozen cases involving equal protection challenges to ballot access and filing fee statutes.[4] In 1983, it departed from

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3 Under §99.061(1), Fla. Stat., a minor party candidate who fails to get sufficient signatures is refunded the entire qualifying fee, including the filing fee.

4 *Williams v. Rhodes*, 393 U.S. 23 (1968) (invalidating Ohio ballot access requirements); *Jenness v. Fortson*, 403 U.S. 431 (1971) (upholding Georgia ballot access requirements); *Bullock v. Carter*, 405 U.S. 134 (1972) (invalidating Texas filing fee requirements); *Storer v. Brown*, 415 U.S. 724 (1974) (upholding certain California ballot access requirements and remanding others); *American Party v. White*, 415 U.S. 767 (1974) (upholding Texas ballot access requirements); *Lubin v. Panish*, 415 U.S. 709 (1974) (invalidating California filing fee requirements); *Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979) (invalidating Illinois signature requirements); *Anderson v. Celebreeze, supra* (invalidating Ohio signature requirements); *Munro v. Socialist Workers Party*, 479 U.S. 189 (1986) (upholding Washington ballot access requirements); *Tashjian v. Republican Party of Conn.*, 479 U.S. 209 (1986) (invalidating Connecticut ballot access requirements); *Eu v. San Francisco Cty. Democratic Cent. Comm.*, 489 U.S. 214 (1989) (invalidating California ban on primary endorsements); *Norman v. Reed*, 502 U.S. 279 (1992) (invalidating certain Illinois signature requirements and upholding others); *Burdick v. Takushi*, 504 U.S. 428 (1992) (upholding Hawaii ballot access requirements).

traditional strict scrutiny in favor of a more flexible balancing approach:

> [A court] must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights. Only after weighing all these factors is the reviewing court in a position to decide whether the challenged provision is unconstitutional.

Anderson, 460 U.S. at 789 (1983). *See Burdick*, 112 S.Ct. at 2063 (the appropriate standard for evaluating a claim that a state law burdens the right to vote is set forth in *Anderson); Tashjian*, 479 U.S. at 213 (courts must identify legitimacy of interests advanced by state and consider the extent to which they necessitate burdening voter rights; *citing Anderson). See Munro*, 479 U.S. at 196–99 (upholding Washington statute requiring minor party candidates to receive at least 1% of vote in primary to be placed on ballot in general election).

Later, this Court continued to apply the *Anderson* test, but reconciled that test with traditional strict scrutiny requirements:

> [T]o subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest...would tie the hands of States seeking to assure that elections are operated equitably and efficiently.

* * *

> [A] more flexible standard applies. A court considering a challenge to a state election law must [apply the *Anderson* test]. Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights.

Burdick, 112 S.Ct. at 2063 (citations omitted). As a result, this Court's approach to either a First Amendment or Equal Protection challenge to a ballot access limitation depends upon its view of the seriousness of the alleged constitutional infringement.

Applying the pronouncements of *Anderson* and *Burdick*, the Florida Supreme Court correctly subjected §99.103 to scrutiny that was no more rigorous than the "rational basis" test typically applied to economic regulation. *See Fulani*, 973 F.2d at 1543 ("The approach used by the *Anderson* Court can be described as a balancing test that ranges from strict scrutiny to a *rational-basis* analysis, depending on the circumstances." [e.s.]). That court accurately described such scrutiny as a "sliding scale of constitutional review." *Libertarian Party*, 687 So.2d at 1294.

At no time below did the Party attack Florida's ability to impose a filing fee. Similarly, the Party never attacked the amount of the fee. Thus, only the use of money, collected in the form of filing fees, is at issue. *See Little v. Florida Dept. of State*, 19 F.3d 4, 5 (11th Cir. 1994) ("Once the existence and amount of the fee is found to pass constitutional muster, as set forth above, this appropriation is the only matter that remains for objection."). The Florida Legislature has chosen to use already-collected revenue for rebates to major political parties, but not minor ones. The issue is simply whether §99.103 creates an unreasonable classification. That issue

does not invoke strict scrutiny. To the contrary, the statute's First Amendment implications are so minimal that a rational basis test applies.

Preliminarily, a minor party candidate can avoid paying a filing fee pursuant to the "undue burden" provision of §99.096, Florida Statutes.[5] The ability to avoid the fee weighs heavily in favor of the constitutionality of §99.103. *See Lubin v. Panish*, 415 U.S. 709, 717–19, (1974) (absence of alternative to qualifying fee rendered California election system exclusionary as to candidates unable to pay); *Little*, 19 F.3d at 5 (upholding Florida election law for judicial candidates, and noting that the law provided an alternative to filing fee).

In *Little*, a statute providing for judicial qualifying fees was challenged. The plaintiffs contended that the fee violated equal protection because the "allocation" (*id.* at 5) of that fee was different for judicial and non-judicial candidates; and that the "chosen appropriation" (*id.*) violated the First Amendment. Relying solely on *Buckley*, the *Little* court recognized the challengers simply disagreed with the Legislature's use of judicial qualifying fees. The court said:

> The situation here is virtually identical to *Buckley*. Money in the form of filing fees is deposited into general revenue for use therein and in the campaign trust fund. Once the *existence and amount* of the fee is found to pass constitutional muster, as set forth above, this appropriation is the only matter that re-

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5 §99.096(5) provides:

> Any candidate who is unable to pay such fee without imposing an undue burden on his or her personal resources or upon resources otherwise available to him or her shall, upon written certification of such inability given under oath to the Department of State or appropriate supervisor of elections, be exempt from paying the qualifying fee.

mains for objection. The above makes clear that such objection will not be heard. [e.s.]

Id. 19 F.3d at 5. Here, the Party does not challenge the existence or amount of the filing fee. They challenge only the Legislature's allocation of the fees collected.

The *Buckley* decision is critical to Respondents' argument. In that decision, the Court addressed the constitutionality of a campaign finance act limiting political contributions and providing an election campaign checkoff on federal tax returns. The Court concluded that despite the contribution limitation's tendency to discourage the First Amendment guarantees of freedom of expression and association, the government's interest in preventing either corruption or the appearance of corruption was sufficiently important to sustain the limitation. *Buckley,* 424 U.S. at 28-9.

The Court also rejected the argument that equal protection required Congress to permit taxpayers to designate particular candidates or parties as recipients of their money:

> The appropriation...is like any other appropriation from the general revenue except that its amount is determined by reference to the aggregate of the one- and two-dollar authorization on taxpayers' income tax returns. This detail does not constitute the appropriation any less an appropriation by Congress. The fallacy of Petitioners' argument is therefore apparent; every appropriation made by Congress uses public money in a manner to which some taxpayers object.
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> * * *
>
> Congress need not provide a mechanism for allowing taxpayers to designate the means in which their particular tax dollars are spent.

Id.; 424 U.S. at 91–92 & n. 125.

Other provisions regarding federal subsidies and limitations on campaign contributions and expenditures were also upheld. Significantly, the court found that public campaign financing did not "prevent any candidate from getting on the ballot or any voter from casting a vote for the candidate of his choice." 424 U.S. at 94.

A close look at the public campaign financing law (subtitle H of the 1974 Internal Revenue Code) at issue in *Buckley* goes far to sustain the statute challenged here. Subtitle H provided that tax checkoff revenue could be given to candidates and parties for financing party nominating conventions, and campaigns for primary and general elections. The monetary amounts available were specified, as were other conditions for voluntary participation in public financing. *Id.*, 424 U.S. at 85–90.

Subtitle H also established criteria for receipt of public money according to party size. Parties were classified as "major", "minor," or "new." Major parties were those whose most recent candidate for President received at least 25% of the vote. Minor parties were those whose candidates received less than 25%, but at least 5% of the vote. All other parties were considered to be new. *Id.*, 424 U.S. at 87–8. Only major and minor parties received public money for presidential nominating convention expenses. New parties received nothing. *Id.*

For the presidential campaigns themselves, the major party candidates received $20 million before the general election. Minor party candidates received, also before the election, a lesser amount based on votes received in the last election in relation to the votes received by the major parties. New party candidates could not receive any money until after the general election. Then, their share was computed under the same method as for minor parties— *if* they received at least 5% of the vote in the general election. *Id.*, 424 U.S. at 88–9.

In short, new party candidates were denied any pre-election public funding. If they did not get at least 5% of the popular vote, they did not get any public money. Here, the Florida Legislature has denied pre-election public funding (i.e., rebates of revenue generated through filing fees) to political parties that do not have at least 5% of the registered voters. If Congress can deny public money to "new" parties receiving less than 5% of the vote in an earlier election, then the Florida Legislature can deny partial filing fee rebates to parties which include less than 5% of the registered voters.

The Party does not attack the 5% amount as unreasonable. It does not attack the Florida Legislature's decision to base rebate eligibility on a party's pre-election size rather than votes actually cast for that party in an earlier election. It concedes that the Legislature could retain all filing fees, thereby denying rebates to all parties.

All that remains is to show a rational basis for §99.103. As that statute declares, its purpose is to assist the state executive committees of the major parties meet their "expenses." §99.103(1). By rebating fees to those committees, the Legislature financially encourages or strengthens major, non-factional parties. It thereby discourages proliferation of splinter parties; which must know, before an election, that they will not be eligible for rebates.

Such considerations were sufficient to justify certain ballot access provisions in California. *See Storer v. Brown*, 415 U.S. 724 (1974) ("California apparently believes with the Founding Fathers that splintered parties and unrestrained factionalism may do significant damage to the fabric of government."). If discouraging factionalism is sufficient to sustain a law affecting a candidate's ability to get onto the ballot, then it must also be sufficient to sustain a far more peripheral law as to rebate of filing fees. Similarly, if the State can favor major parties in a manner restricting ballot access by splinter groups, the State certainly can favor major parties when

allocating modest amounts of public funds to which no political party is constitutionally entitled.

Applying a rational basis test, §99.103 can reasonably be said to strengthen major parties and thereby discourage factionalism through modest financial support of the executive committees of major political parties. Any First Amendment implications are overcome, particularly since a minor party candidate can avoid the filing fee when that fee would unduly burden a party's resources otherwise available to the candidate.

The Party's railings against §99.103 are essentially no different from the arguments that were unsuccessful in *Buckley*. The Party too must fail; the Florida Supreme Court correctly decided this case.

B. Political Parties and Candidates Have No Independent Constitutional Right to "Financially Develop and Compete"

The Party next contends the challenged statute harms its right to "financially develop and compete." There are two barriers to reaching this issue, neither of which the Party can overcome.

First, there has never been any evidence which would support the Party's claim of harm. This case proceeded on narrow facts stipulated to by the parties. These facts are accurately described in the Party's statement of the case. (Pet., p. 5) By no stretch of the imagination would they support the Party's speculation that its competitiveness was abridged by §99.103.

This court must not accede to such speculation. *See Buckley v. Valeo*, 424 U.S. 1, 70 (1976) (agreeing that alleged infringement of First Amendment rights through compelled disclosure of contributors was "highly speculative"); *Id.*, 424 U.S.

at 93, n. 126 (claim that public funding of presidential campaigns would lead to government control of political parties' internal affairs "wholly speculative"); and *Id.*, 424 U.S. at 99 & n. 134 (rejecting claim that one aspect of election funding law disadvantaged non-major parties, in part because "whatever merit the point may have...is questionable on the basis of the record before the Court").

Second, the Party does not, and cannot, point to an independent constitutional right to "financially develop and compete." Absent violation of other constitutional rights asserted by the Party, there can be no cognizable harm. Whatever interest the Party has in being financially competitive, that interest is not of constitutional status. It provides no basis for certiorari review.

C. Section 99.103, Florida Statutes, Does Not Impose an Unconstitutional Condition on the Party's Associative Rights

The Party's third point must fail for much the same reason as its second point. There are no facts in the record which would show §99.103 impaired the Party's associational rights. To the contrary, the stipulated facts show that the Party (already formed) timely nominated its chosen candidate, who paid a filing fee. It was never alleged that the candidate (Wilson) was reluctant to run as the Party's candidate, much less that he was reluctant run because his filing fee would not be partially rebated to the Party's executive committee.

Equally important, the challenged statute, on its face, does not impose any condition on the Party's associational rights. As said earlier, §99.103 is an appropriations measure only. It does not establish requirements for the formation of a party or nomination of candidates. It does not impose conditions or deadlines for appearing on the ballot. It does not impose a filing fee. Rather it simply states how already-collected filing fees will be disbursed.

Whether another statute, under different facts, could impose an unconstitutional condition on a political party's associative rights is a question that must wait another day. The Party's third point does not present any ground for certiorari review.

II. THE CONSTITUTIONALITY OF §99.103, FLORIDA STATUTES, DOES NOT PRESENT A QUESTION OF IMPORTANCE

In a single paragraph, the Party claims "campaign finance reform" is a "matter of intense legal and public policy concern." Perhaps true in the abstract, this statement has nothing to do with this case, which involves a minor statute specifying how political candidates' filing fees are disbursed after collection.

There is no factual or legal basis for the Party's claim that this case involves campaign finance reform. Given the facts and statute at issue, this case is not sufficiently important for this Court to review the correctly-reasoned decision of the Florida Supreme Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully Submitted,

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